the public will and in compelling a majority to submit to the rule of the minority. To amend the federal constitution a resolution must pass both houses of congress by a two-third vote and the amendment submitted must then be ratified by three-fourths of the states.

A minority can thus prevent a change until the majority become so large as to give those desiring a change a two-thirds vote in the senate and house, and then it can permanently obstruct the carrying out of the popular will on a constitutional question if it can control thirteen states out of forty-eight. We need, and I doubt not shall some day secure, an amendment to the federal constitution making it easier for a majority to change the constitution, either by striking out that which has become objectionable or by adding that which has become desirable.

The state constitution bears witness to a growing confidence in the people; they are much more easily amended, as a rule, than the federal constitution and the later state constitutions are more easily amended than the earlier ones. When New Mexico's constitutional convention recently attempted to unduly restrict the power of amendment, congress compelled a separate vote on this specific provision and the electors promptly modernized the method of amendment.

THE INITIATIVE

The latest step in advance is embodied in what is known as the initiative. For some years past the initiative and referendum—they are usually linked together but are not dependent upon each other—have found increasing favor among those who are seeking to make the government responsive to the people's will. Of the two, the initiative is by far the more important. While the referendum enables the people to vote a public measure before it becomes a law, the initiative not only enables the people to repeal any law which is objectionable to them, but what is more vital to their welfare, permits them to enact directly any law which they desire, without recourse to the legislature. Through the initiative they can also submit an amendment to the constitution and secure a vote of the people upon it. THE INITIATIVE IS, THEREFORE, THE MOST USEFUL GOVERNMENTAL INVENTION WHICH THE PEOPLE OF THE VARIOUS STATES HAVE HAD UNDER CONSIDERATION IN RECENT YEARS. IT IS THE MOST EFFECTIVE MEANS YET PROPOSED FOR GIVING THE PEOPLE ABSOLUTE CONTROL OVER THEIR GOVERNMENT. With the initiative in a constitution, a constitution's defects, either of omission or commission, becomes comparatively harmless, for the people are in a position to add any provision which they deem necessary and to strike out any part of the constitution which they dislike.

The initiative and referendum do not overthrow representative government—they have not come to destroy but to fulfill. The purpose of representative government is to represent, and that purpose fails when representatives misrepresent their constituents. Experience has shown that the defects of our government are not in the people themselves, but in those who, acting as representatives of the people, embezzle power and turn to their own advantage the authority given them for the advancement of the public welfare. It has cost centuries to secure popular government—the blood of millions of the best and the bravest has been poured out to establish the doctrine that governments derive their just powers from the consent of the governed.

All this struggle, all this sacrifice, has been in vain if, when we secure a representative government, the people's representatives can betray them with impunity and mock their constituents while they draw salaries from the public treasury.

INITIATIVE AND REFERENDUM

The initiative and referendum does not decrease the importance of legislative bodies, nor do they withdraw authority from those who are elected to represent the people; on the contrary, when the people have the initiative and the referendum with which to protect themselves, they can safely confer a larger authority upon their representatives. When the constitution embodies the initiative and referendum the representative is not compelled to vote for any measure which his conscience bids him support, but he is coerced into a serious consideration of the merits of the measure by the fact that the people, through the referendum, may veto the measure if they do not like it . When the constitution provides for the initiative and the referendum, the people simply say to their representatives: "Do your duty, follow your judgment and your conscience, and the more accurately you interpret our wishes the less we shall have to do." The fact that the people can act through the initiative and referendum makes it less likely that they will need to employ the remedy—there will not be so many bad laws to complain of when the people reserve the right to veto, and it will be easier to secure the enactment of good laws when the people are not absolutely dependent upon legislators for the enactment of such measures as they may desire. Direct legislation exerts an indirect, as well as direct, influence and when the system is fully established and the people thoroughly understand it, it is not likely to be employed often because those elected to represent the people will be more in sympathy with their constituents.

Some difference of opinion exists among the friends of the initiative and referendum as to the percentage that ought to be required for the petitions which start the machinery through which the people act. It will be observed, however, that the difference of opinion on this subject reflects to some extent the degree of confidence which people have in the reform. In proportion as a person distrusts the intelligence and patriotism of the masses he is apt to demand a high percentage, partly in the hope that a high percentage may discourage entirely a resort to this method of legislation and partly because he fears that it may be resorted to without sufficient reason. The Oregon law has usually been made the basis for the fight for these reforms in the various states and I am unqualifiedly in favor of a low percentage as against the high one. Eight per cent for the initiative on ordinary measures and twelve per cent on constitutional amendments is not unreasonably low. Neither is five per cent too low for a referendum vote. I am sure that experience will show that these remedies will not be resorted to without real provocation and there is no reason why those who are public spirited enough to assume the labor of bringing questions before the voters should be taxed with unnecessary labor. The larger the percentage required, the greater the burden thrown upon those who undertake to ascertain the popular will.

California has gone a step farther and reduced the percentage below the Oregon limit where the legislature is first given an opportunity to act. This is a step in advance and I am pleased to learn that it commends itself to your judgment.

The fact that the initiative is merely the means of bringing the subject before the voters and that a majority of those voting must speak affirmatively before the proposed measure can have any effect is sufficient to prevent the submission of frivolous questions or of propositions which have not a substantial support. It is not only labor but labor accompanied by the penalties of defeat to submit an unpopular measure, and this will usually protect the public from any unnecessary use of the means provided by the initiative and referendum.

One point should be carefully guarded. The opponents of the initiative and referendum are usually insistent in their demand that a proposition submitted to the people must receive, not merely a majority of the votes cast on the proposition, but a majority of the votes cast at the election. This is an unreasonable requirement. Legislators are elected by a plurality vote, not by a majority, and there is no reason why more than a plurality should be required for the enactment of a law by a direct vote of the people or for the adoption of a constitutional amendment. THE VOTES CAST UPON THE PROPOSITION ought to be the test—to require a majority of all the votes cast at the election is to give the negative the benefit of those votes cast at the election but not cast either for or against the proposition. Why should those who propose a reform be subjected to this disadvantage? A reform that secures a majority of the votes cast on the subject certainly has the presumption of right upon its side. The most that can be said of those who do not vote is that they are indifferent and if so, they ought not to be counted either way. If they fail to vote because they are too ignorant to understand the subject there is less reason why their voice should be made effective in defeating a proposition which has secured the support of a majority of those who have studied the subject and expressed themselves upon it.

THE RECALL

The attacks which were formerly made upon the initiative and referendum have been directed more recently against what is known as the recall But it will be found upon examination that the recall is an evolution rather than a revolution. The right to terminate an official term before its legal expiration has always been recognized. I know of no public official who is not subject to impeachment at the hands of some tribunal. The only difference between the recall, as now proposed, and impeachment, as it has been employed, is that in impeachments the trial is before a body of officials while the recall places the decision in the hands of the people. It is simply a question, therefore, whether public servants shall be tryable only before public servants or by the sovereign voters who are the masters. If impeachment had been found entirely satisfactory, recall would not now be under discussion, but impeachment has proved unsatisfactory for two reasons. It is difficult to get officials to impeach an official; whether from fear that they will establish a precedent and endanger their own tenure of office, or whether for some other reason, may be a matter of opinion, but it is undeniably true that the present method of impeachment does not meet the requirements of today. Even the president of the United States, in a recent speech condemning the recall, admitted that the process of removal by impeachment must be improved upon.

A distinction should be drawn between the principle involved in the recall and the details of the measure applying the principle. There is room for a wide difference of opinion in the matter of detail and I am not inclined to be tenacious as to any particular detail, PROVIDED THE PRINCIPLE IS CLEARLY RECOGNIZED AND FULLY APPLIED.

In acting upon definite propositions the people are less liable to be mistaken than in acting upon persons. They are also less likely to be swayed by prejudice or stirred by emotion. It is not unreasonable, therefore, to require a larger percentage of the voters to a petition for a recall than in the case of the initiative or referendum. I submit, too, that it may be wise to separate the question of the recall from the candidacy of any other person. When the voter is called upon to decide upon the merits of the recall and asked to choose, at the same time, btween the incumbent and a person against him, there is more danger of confusion of thought. A nearer approach to justice may be found in having the question of recall settled by itself and the selection of a new official determined subsequently when the relative popularity of the individuals will not draw attention away from the single question whether the incumbent has failed to discharge satisfactorily the duties of the office.

Some have suggested that, to prevent the recall of an official on purely partisan grounds, the petition ought to contain the names of enough of those who voted for him to indicate the withdrawal of confidence—the petitioners' action at the first election being revealed by his oath where it can not be otherwise ascertained. This suggestion is worthy of consideration and to require this would enforce no hardship upon the petitioners. A still further limitation has been proposed, namely; that the petition should be left with some official where it could be signed by those wishing to sign it instead of being circulated by those who would solicit signers. This would not prevent the use of the recall in an emergency but if such a provision is inserted in the law the percentage should be made lower than in the case of a circulated petition.

In discusing the recall I have assumed that it would apply without discrimination to all officials, including the judiciary. The argument that a judge should be exempt from the operation of the recall, even when it is applied to other officials, has no sound foundation. If it is insisted that he enjoys public confidence to a greater extent than other public officials, this very argument answers itself because that superior confidence will protect the judge against injustice. In proportion as people have confidence in the bench they will be less likely to remove a judge on insufficient grounds. If a judge is wrongfully removed—after the people have been given an opportunity to investigate the charge made against him and after passion and excitement have had time to subside—if under these conditions the people still do injustice to a judge, society can better afford to risk such occasional injustice than to put the judge beyond the reach of the people. If a judge is unjustly removed, the people will make amends for it when they discover their error and the vindication that the judge will receive when the error is corrected will more than compensate him for any mortification that he may suffer in the meantime. It is not necessary to reply to the argument that the recall will make cowards of judges; the judge who would be swerved from his duty by fear of a recall would not be fit